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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,543	01/18/2002	Ying-Chang Liang	1085-041-PWH	9245
60597	7590	07/19/2006	EXAMINER	
PATRICK W. HUGHEY P.O. BOX 6553 PORTLAND, OR 97228			WARE, CICELY Q	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/054,543

Applicant(s)

LIANG ET AL.

Examiner

Cicely Ware

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 08 May 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1,3-9,11-24,26-31,38 and 44-49 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-9,11-24,26-31,38 and 44,45 is/are rejected.

7) Claim(s) 46-49 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim1, 3-9, 11-24, 26-31, 38, 44-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-45 of copending Application No. 3003/0026348. Although the conflicting claims are not identical, they are not patentably distinct from each other because

a. Claim 1 of the present application encompasses all the limitations of claims 1 and 2 of the copending Application.

b. Claims 3-7 of the present application encompass all the limitations of claims 3-7 of the copending Application.

c. Claim 8 of the present application encompasses all the limitations of

claims 8 and 10 of the copending Application.

d. Claim 9 of the present application encompasses all the limitations of claim 9 of the copending Application.

e. Claim 11 of present application encompasses all the limitations of claims 8 and 11 of the copending Application.

f. Claims 12-14 of present application encompass all the limitations of claims 12-14 of the copending Application.

g. Claim 15 of the present application encompasses all the limitations of claims 8 and 15 of the copending Application.

h. Claims 16-23 of the present application encompass all the limitations of claims 16-23 of the copending Application.

i. Claims 24-25 of the present application encompasses all the limitations of claims 24-25 of the copending Application.

j. Claim 26 of the present application encompasses all the limitations of claims 24 and 26 of the copending Application.

k. Claim 27 of the present application encompasses all the limitations of claims 24 and 27 of the copending Application.

l. Claim 28-30 of the present application encompasses all the limitations of claims 28-30 of the copending Application.

m. Claim 31 of the present application encompasses all the limitations of claims 31 and 32 of the copending Application.

n. Claims 44-45 of the present application encompass all the limitations of

claims 44 and 45 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Allowable Subject Matter***

3. Claims 46-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cicely Ware whose telephone number is 571-272-3047. The examiner can normally be reached on Monday – Friday, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

*Cicely Ware*

cqw  
July 6, 2006



**KHAI TRAN**  
**PRIMARY EXAMINER**